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ABSTRACT

Intended to aid in the implementation of Public Law 93-380 (Education Amendments of 1974) and Public Law 94-142 (Education for All Handicapped Children Act), the manual provides guidelines for South Carolina hearing officers when parents of handicapped children and local education agencies disagree about evaluation, placement, changes in educational placement, or accuracy of educational records. The section on laws and litigation pertaining to the handicapped considers South Carolina state law, federal laws (Public Law 93-380, Public Law 94-142, and Section 504 of the Vocational Rehabilitation Act) and significant court decisions. Substantive due process and procedural due process are briefly explained next. The hearing officer's roles and responsibilities are considered in the third section. Procedures prior to, during, and after a hearing are outlined. The final section examines appeal procedures: procedures/content of appeal, procedures of the State Education Agency hearing officer after receiving an appeal, procedures during a review, and procedures subsequent to a review. Appended are supplementary information and state policies regarding least restrictive alternative, non-discriminatory testing and placement, confidentiality, the individualized education program; and charts dealing with evaluation and placement and hearing procedures. (DB)

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A HANDBOOK FOR HEARING OFFICERS

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INTRODUCTION

Public Law 93-380 established the authority for impartial Hearing Officers to conduct hearings at the local level when parents of handicapped children and the local education agency disagree in matters pertaining to evaluation, placement, changes in educational placement and accuracy of educational records. Similarly, Public Law 94-142 accorded parents/local education agencies the right to an appeal to the State Education Agency when either party disagrees with the decision of the Hearing Officer following a hearing conducted at the local level. Through the **Annual Program Plan and the State Plan Amendment for FY 1975 Under Part B of the Education of the Handicapped Act as amended by P. L. 93-380,** the South Carolina Department of Education has the responsibility for training these Hearing Officers.

This publication has been developed for the purpose of providing information relative to legislation and litigation pertaining to the handicapped, the procedures for insuring "due process" developed by the South Carolina Department of Education, and to suggest procedures to be followed by a Hearing Officer prior to, during, and after a hearing. The Department is hopeful that this publication will be helpful to Hearing Officers in fulfilling their responsibilities.

STATE LAW

In February of 1972, the South Carolina Legislature passed an act "to provide for the mandatory establishment of educational and training services and facilities for handicapped children in the public schools...who cannot be trained adequately without special educational facilities and services." (Article 4.1, §21-295.10, South Carolina Code of Laws, as amended). Further, the State Board of Education was authorized to establish special education programs in the State and to have jurisdiction over the kinds and types of services and facilities provided and for screening, evaluating, and placing pupils in programs for the handicapped. Each school district or group of districts was charged with the requirement of conducting a survey of the educational needs of its handicapped pupils and developing an educational plan for these pupils. This plan specifies the provision of instruction through resource, itinerant, and self-contained programs, or other models approved by the State Department of Education. (Article 4.1, §21-295.11 and §21-295.13, South Carolina Code). Pupils (both handicapped and non-handicapped) eligible for public school services in South Carolina are those between the ages of six (6) and twenty-one (21). The legal school age for hearing handicapped pupils, however, is four (4) years of age and older.

Section 21-295 of the 1962 Code, as amended, provides for the following definitions of handicapping conditions:

"Educable mentally handicapped pupils" means pupils of legal school age whose intellectual limitations require special classes or specialized education instruction to make them economically useful and socially adjusted; "Trainable mentally handicapped pupils" means pupils of legal school age whose mental capacity is below that of those considered educable, yet who may profit by a special type of training to the extent that they may become more nearly self-sufficient and less burdensome to others;

"Emotionally handicapped pupils" means pupils of legal school age with demonstrably adequate intellectual potential, who because of emotional, motivational, or social disturbance require special classes or specialized education instruction suited to their needs; "Hearing handicapped pupils" means pupils of age four or older who are certified by a licensed specialist that their hearing deficit requires special classes or specialized education instruction suited to their needs;

"Orthopedically handicapped pupils" means pupils of legal school age who have an impairment which interferes with the normal functions of the bones, joints, or muscles to such an extent and degree as to require the school to provide special facilities and instructional programs;

"Visually handicapped pupils" means pupils of legal school age who either have no vision or whose visual limitations after correction result in educational handicaps unless special provisions are made; "Learning Disabilities pupils" means pupils with special learning disabilities who exhibit a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language. These may be manifested in disorders of listening, thinking, talking, reading, writing, spelling or arithmetic. They include conditions which have been referred to as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, developmental aphasia, etc. They do not include learning problems which are due primarily to visual, hearing, or motor handicaps, to mental retardation, emotional disturbances or to environmental disadvantage;

"Physically handicapped children" means children of sound mind and of legal school age who suffer from any disability making it impracticable or impossible for them to benefit from or participate in the normal classroom program of the public schools."

In 1976 the State Board of Education promulgated rules and regulations for the evaluation and placement of handicapped children in **Procedures for Survey, Screening, Evaluation, Placement, and Dismissal of Children Into/Out of Programs for the Handicapped.** This document defines Speech and Language Handicapped" as the following :

> Speech and language handicaps are those disorders which tend to interfere with or limit, to varying degrees, the individual's ability to formulate, express, receive or interpret oral language. Speech and language handicaps may be manifested in degrees of mild, moderate or severe and be exhibited as disorders or articulation, voice, rhythm, language, delayed speech and language, and speech/language disorders associated with cleft palate, cerebral palsy conditions, or hearing loss. Speech and language behavior, associated with dialectal differences, may indicate a need for the availability of appropriate services, optional for pupil participation.

FEDERAL LAWS

The litigation of the 1970's revealed that decisions regarding the identification, evaluation and placement of handicapped children for education in the public schools were frequently made arbitrarily, with little supporting data and as a matter of administrative convenience. Sometimes children were placed in programs for the handicapped without parental involvement. These practices were remedied with the establishment of due process requirements as a result of the 1972 Pennsylvania Association for Retarded Children consent agreement which was entrenched in the Fifth and Fourteenth Amendments of the United States Constitution. The fourteenth Amendment provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law."

Public Law 93-380

Public Law 93-380, the Education Amendments of 1974, contained requirements for the education of the handicapped which had to be addressed by both State and local education agencies. Through the **Annual Program Plan and the State Plan Amendment for FY 1975 Under Part B of the Education of the Handicapped Act as Amended by P.L. 93-380 and The Annual Program Plan and the State Plan Amendment for Fiscal Year 1976 Under Part B of the Education of the Handicapped Act as Amended by P.L. 93-380,** the following requirements of the Law were addressed by the State Department of Education:

1. Least restrictive educational environment, which provides for the education of handicapped children with non-handicapped to the greatest extent practicable.
2. Procedural due process, which insures equal protection under the law to handicapped children, their parents and the public schools.
3. Non-biased evaluation, which provides that testing and evaluation materials and procedures used for the classification and placement of handicapped pupils be selected and administered so as not to be culturally or racially discriminatory.
4. Confidentiality, which insures the protection of the rights and privacy of parents and handicapped pupils. (See Appendices A, B, and C of this document for South Carolina State Board of Education requirements relative to the implementation of least restrictive alternative, non-biased evaluation, and confidentialty. Due process is addressed in the main text).

Public Law 94-142

Public Law 94-142, the Education for all Handicapped Children Act, is often referred to as the "Bill of Rights for Handicapped Children." Signed into Law on November 29, 1975, the Act not only includes the basic tenets of Public Law 93-380 but extends the legislation to include a more comprehensive plan for the education of all children with handicaps. This theme is reflected in the following statement of purpose from the final regulations for the implementation of Public Law 94-142, as contained in the Federal Register, Volume 42, Number 163, August 23, 1977:

"(a) To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs,
(b) To insure that the rights of handicapped children and their parents are protected;
(c) To assist States and localities to provide for the education of all handicapped children, and
(d) To assess and insure the effectiveness of efforts to educate those children." (§121a.1)

Although not a component of P.L. 93-380 but required under P.L. 94-142, the Individualized Education Program or IEP is defined as a "written statement for each handicapped child developed in any meeting by a representative of the local education agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children..." (§602 (19))

Persons responsible for the development of the IEP include:

1. A representative of the Local Education Agency/Intermediate Education Unit or private school
2. The pupil's classroom teacher
3. The parent(s) or surrogate
4. The pupil, where appropriate

5. Other persons who may contribute meaningful information

Aditionally, Public Law 94-142 requires that a member of the evaluation team or a person knowledgeable about the evaluation procedures and results of the evaluation be present at the meeting to develop the IEP when the pupil has been evaluated for the first time. Any of the persons sited above may be utilized for this purpose, if feasible.

The law requires that the Local Education Agency/Intermediate Education Unit provide "assurances that the local education agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program of each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less annually." (§614 (a) (5))
(See Appendix D for the State Department of Education's policy to insure compliance with the law pertaining to the individualized education program).

Final regulations for the implementation of Public Law 94-142, as promulgated by the United States Office of Education, Bureau of Education for the Handicapped, require that the State Education Agency shall:

"(a) Undertake monitoring and evaluation activities to insure compliance of all public agencies within the state with the requirements of Subparts C, D, and E," (i.e., Services, Private Schools, Procedural Safeguards).

"(b) Develop procedures (including specific timelines) for monitoring and evaluating public agencies involved in the education of handicapped children. These procedures must include:
(1) Collection of data and reports;
(2) Conduct of on-site visits;
(3) Audit of Federal fund utilization; and
(4) Comparison of a sampling of individualized education programs with the programs actually provided." (§121a.601)

The State Educational Agency will conduct program audits of school districts and other agencies on an annual basis to insure compliance with the provisions of the Act.

Section 504 of The Vocational Rehabilitation Act

In September 1973, the Vocational Rehabilitation Act (Public Law 93-112) was passed by Congress and signed by the President. The final regulations were signed into law April 28, 1977. As the first Federal civil right law established to protect the rights of the handicapped, Section 504 of the Act provides that "no other qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance".

Subpart D of the Act, which relates to preschool, elementary and secondary education, closely parallels the requirements of Public Law 94-142 in that 1) a free appropriate public education must be provided to all qualified handicapped persons, 2) non-based evaluation procedures must be utilized for classification and placement, 3) the least restrictive alternative must be utilized for the placement of handicapped pupils, and 4) procedural safeguards must be assured.

Although the Individualized Educational Plan is not specifically required under Section 504 of the Act, it is one means of meeting the standards established for a free appropriate public education.

Compliance with the components of Public Law 94-142 is required if states expect to receive any of the funds appropriated under the Act. Any recipient of "federal financial assistance" from the Department of Health, Education and Welfare, however, must be in compliance with Section 504 even though there are no federal monies authorized in the Vocational Rehabilitation Act. Federal financial assistance includes "any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;
(2) Services of Federal personnel; or
(3) Real and personal property or any interest in or use of such property..." (§84.3(h))

This includes, for example, universities, local school districts, daycare centers and hospitals.

SIGNIFICANT COURT DECISIONS

Beginning about 1970, both state and federal judicial systems have successfully challenged the legality of denying a public education to a handicapped child. The equal protection clause of the Fourteenth Amendment of the United States Constitution, which guarantees equal protection of the law to all people, provides the basis for such litigation. In the field of education, this concept is most appropriately echoed in the 1954 **Brown v. Board of Education** decision, where the Supreme Court declared:

> In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity for an education. Such an opportunity, where the state has undertaken to provide it, it a right which must be made available to all on equal terms.

This position regarding the right to education was further upheld in the **Maryland Association for Retarded Children v. State of Maryland** case in 1974 and in a similar decision in 1973 in New York.

In January 1970, a suit was filed in the District Court of Northern California [**Diana v. State Board of Education**] in which allegations were made relative to improper placement of Mexican American students in classes for the mentally retarded based upon inappropriate testing procedures. The nine children came form homes where Spanish was the predominant language spoken, and when these children were retested in Spanish, seven scored higher than the IQ cutoff for placement in classes for the educable mentally retarded. Out of this suit and another similar one [**Larry P. v. Riles,** 1972) grew the concept of nondiscriminatory education.

The Pennsylvania Association for Retarded Children brought a class action suit against the Commonwealth of Pennsylvania in January 1971 in Federal District court charging failure of the state to provide all school age retarded children access to a free public education. Additionally, in another class action suit, a court order declared that all school age children, regardless of the severity of their handicap, were entitled to a free appropriate public education [**Mills v. Board of Education of the District of Columbia,** 1972). In both the **Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania,** Consent Agreement, 1972 and in the Mills decree, decisions were made relative to the manner in which children with handicaps were identified, evaluated and placed in educational programs. Due process requirements were, therefore, established as a result of these two cases.

In our own state of South Carolina in **Donnie E. v. Herbert A. Wood,** 1977, a Lexington county school district was ordered to evaluate and develop an individualized education program for an emotionally disturbed boy expelled after attempting to engage another boy in a fight on school grounds. The school district was charged with violating Section 504 of the Vocational Rehabilitation Act when it excluded the boy from school and failed to provide an education designed for his individual needs.

Another suit which violated Section 504 regulations was one brought by Nelda K. Barnes against Converse College in Spartanburg, South Carolina. In this decision, the college was ordered to provide the services of an interpreter at no extra cost to a deaf student [**Barnes v. Converse College,** 1977). Her claim was based upon the requirement that postsecondary educational institutions receiving federal monies may not discriminate against the handicapped by denying auxiliary aids such as interpreters.

These and other cases have brought forth the right to education issue for the handicapped and have subsequently laid the groundwork for federal legislation to insure these rights.

UNIT II

DUE PROCESS

The concept of "due process" encompasses the protection of an individual's rights with respect to both "substance" and "procedure."

1. **Substantive Due Process**

   In matters pertaining to the education of the handicapped, substantive due process relates to the requirement of law that a free, appropriate public education be provided for all handicapped children. Additionally, substantive due process involves the aspects of law inherent to assuring a free, appropriate education, i.e., proper evaluation and placement, development of an appropriate Individualized Education Plan (IEP), re-evaluation at specified intervals, etc.

2. **Procedural Due Process**

   Procedural due process relates to the procedures and time lines which must be adhered to in the evaluation and placement of pupils, in obtaining written parent permission prior to evaluation and placement, in invoking hearing procedures when the parent and local education agency (LEA) disagree in matters of a substantive nature, in invoking appeal procedures when the parent/LEA disagrees with the finding s and decisions in hearings conducted at the local level.

Public Law 93-380 required states to develop procedures to protect the rights of handicapped children and their parents, including the selection of impartial hearing officers to conduct hearings at the local level when necessary. Additionally, Public Law 94-142 required states to develop procedures for appeals to the State Education Agency (SEA), when parents/LEA do not agree with the decision of the hearing officer at the local level. The South Carolina Department of Education developed the following procedures which were approved by the State Board of Education, the Attorney General and the Bureau of Education for the Handicapped, Office of Education of the U.S. Department of Health, Education and Welfare to insure "due process".

I. DEFINITIONS

A. **Due Process.** This term means "notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. The guarantee of 'due process' requires that every man have protection of day in court and benefit of general law."

B. **Parent.** The term "parent" includes a natural mother or father, an adoptive mother or father, a legally appointed guardian, a surrogate parent for a child appointed pursuant to procedures outlined herein. The term "parent" also includes the child if he has reached the age of majority.

C. **Notification.** In all procedures regarding a due process hearing terms such as "notice" and "notification" shall mean (1) written statment in the primary language of the home by registered/certified mail, and (2) oral communication in the primary language of the home. In procedures regarding "written permission" for evaluation and placement, the initial notification may be by regular mail and by oral communication. In cases where the parents fail to reply, subsequent notification shall be provided by registered/certified mail.

D. **Impartial Hearing Officer.** The term "impartial hearing officer" means a person or tribunal of persons assigned by the local education agency at a due process hearing. It is the hearing officer's duty to assure that proper procedures are followed and that the rights of the parties are protected. An impartial hearing officer must be:
   1. Unbiased--not prejudiced for or against any party involved in the hearing.
   2. Disinterested--not having any personal interest at stake in the outcome.
   3. Independent--may not be an officer, employee or agent of the LEA.

E. **"Days".** Mean normal working days.

F. **"Surrogate Parent".** Means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the state. Surrogate parents will not be employees of the SEA or LEA involved in the education or care of children. The function of the surrogate parent shall be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest.

1 **Dimke v. Finke,** 209 Minn., 29 295 N.W. 75, 79.

* II. PROCEDURES FOR EVALUATION AND PLACEMENT OF THE CHILD IN SPECIAL PROGRAMS

A. **Written Permission.** Written permission must be obtained from the parent/surrogate prior to: 1) formal testing and evaluation 2) placement of a pupil into a program for the handicapped, 3) any changes to be made in educational placement subsequent to the initial placement and, 4) disclosure of personally identifiable information to anyone other than participating agencies (reference **Confidentiality** Attachment #1) In circumstances where a child's parents are not known, are unavailable, or the child is a ward of the state, the child shall be assigned a parent surrogate by the LEA (see Appendix A). An LEA-Parent conference shall be conducted to explain the rights and the due process procedures to parents.

B. **Evaluations.**

1. Within ten (10) working days after permission for evaluation is obtained, the chairperson of the evaluation team shall notify the parent as to the schedule for the evaluation. This notice shall contain the following information:
   a. The reasons for the requested evaluation and the name of the person who initiated the process.
   b. The evaluation procedures.
   c. A description of the limitations of the testing procedures and instruments.
   d. A statement of the parent's right to review all relevant records.
   e. A statement of the parent's right to review the procedures and instruments.
   f. A description of how the findings of the evaluations will be used.
   g. A statement of the parent's right to refuse permission for the evaluation, with the understanding that the LEA can request a hearing to present its reasons and try to obtain approval to conduct the evaluation.
   h. A statement of the parent's right to be fully informed to the results of the evaluation.
   i. A declaration that the child's educational status shall not be changed without the knowledge and written approval of the parent, or until the notice and due process procedures have been exhausted.
2. Within thirty (30) days of notifying the parent of the evaluation schedule, the evaluation will be completed.
3. Within ten (10) working days after the evaluation is completed the parent shall receive notification of the results of the evaluation, and the educational implications.

C. **Placement of the Child.**

1. Within ten (10) days after the evaluation the parent shall be informed that an individual educational plan will be developed and the parent shall be given the opportunity to participate in the formulation of the plan.
2. Within ten (10) days after presentation of the results of the evaluation and educational implications, the chairperson of the placement committee shall notify the parents by registered/certified mail and orally that a change in placement of the child's educational plan is proposed. This notice shall contain:
   a. The proposed individualized special educational plan, the method by which it was developed, the reasons why the proposed placement is deemed appropriate for the education of the child, and the reasons why it is the least restrictive program appropriate for the education of the child.
   b. Specific tests, reports, or evaluation procedures upon which the proposed educational placement is based.
   c. A statement that school reports, files and records pertaining to the child shall be available for inspection and copying at reasonable cost.
   d. A statement describing in detail the right to obtain a due process hearing and a description of all of the rights regarding the procedures of such a hearing if there are objections to the proposed placement.
   e. A list of those agencies in the community from which legal counsel may be obtained for those unable to pay for counsel.
   f. A statement of the opportunity to obtain an independent evaluation of the child at public expense, including the names, addresses and telephone numbers of appropriate public agencies where such services can be obtained at no cost.
   g. A description of the procedures for appealing the decision resulting from the due process hearing (see Part V).

* Reference schematic described in Appendix E, Chart I.

h. A statement that the child shall remain in the present educational program until such time as there is a decision following the due process hearing or until the proposed educational placement is accepted by the parties. (In emergency situations where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement shall be made earlier by order of the hearing officer).

i. A statement that no more than eight months after the child has been placed in the program recommended by the evaluation team and annually thereafter, the LEA shall conduct an initial periodic review of the program to evaluate the effectiveness of the program in meeting the special educational needs of the child. Upon request, the parent shall obtain an initial review at any time after the first three months of the child's placement. During the periodic review the parent shall have all the rights of due process.

j. A statement that within ten (10) days after parental permission is obtained, the pupil will be placed.

D. **Periodic Review.** At least five (5) days before the periodic review is to begin, the LEA shall notify the parents.

The notice shall include:

1. The time that the review will take place.
2. A description of the procedures to be used in the review.
3. An invitation to the parent to participate in the periodic review.
4. A statement that the parent shall receive the findings and recommendations of the periodic review within ten days after completion of the review.
5. A statement containing the procedures for changing the child's educational status or for obtaining an alternative evaluation if the review indicates the need for such.

* III. PROCEDURES FOR DUE PROCESS HEARING REQUESTED BY LEA

A. If a parent refuses consent for the proposed evaluation, placement or change in educational placement or fails to respond within ten days to the LEA's attempts by means of registered/certified mail, telephone, home visit, etc., to obtain consent, the LEA has the right to request a hearing to obtain approval for the proposed evaluation, placement or change in educational placement. If such a hearing is requested, the LEA shall notify the parent by registered/certified mail and orally on the same day as the request for a hearing is filed. This notice shall include:

1. A copy of the original notice requesting permission for the evaluation.
2. A statement that school files, reports and records pertaining to the child shall be available for inspection and copying at reasonable cost.
3. A detailed description of all of the rights regarding procedures at the due process hearing.
4. A list of those agencies in the community from which legal counsel may be obtained for those unable to pay.
5. A statement of the parent's right to an appeal of the decision resulting from the due process hearing.

B. **Prerequisites to a Hearing.** Prior to the holding of a due process hearing, the following shall have occured:

1. Prior notice, as described above, shall have been provided to the parent.
2. The parent shall have been allowed access to school reports, files, and records pertaining to the child, for inspection and copying at reasonable cost.
3. An impartial, trained hearing officer shall have been appointed to preside at the hearing within five days after a request for a hearing.
4. The hearing officer shall have provided to the parent or to the officials of the local education agency notification as to the time and place of the hearing within five days after his appointment. The notification shall be given at least twenty days prior to the hearing and the hearing shall be scheduled at a time and place convenient to the parent.
5. The parent shall have the right to compel the attendance of any officer, employee or agent of the local education agency or the state education agency, who may have evidence or testimony relevant to the question of the adequacy or appropriateness of the proposed evaluation.
6. The child shall remain in the present educational program until the hearing. In emergency situations, however, where the health and safety of the child or of other persons would be

* Reference schematic outlined in Appendix E, Chart II.

endangered by continuing the present program, a change in program may be made earlier by written order of the hearing officer.

C. **Due Process Hearing.** A due process hearing shall be conducted in accordance with the following procedures:
   1. The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner. All the parties involved in the hearing shall have an opportunity to present their evidence and testimony.
   2. The parent and the local education agency may have legal counsel and witnesses at the hearing.
   3. The hearing shall be closed to the public unless the parent requests an open hearing.
   4. The parent and the local education agency and their respective representatives shall have the right to present evidence and testimony.
   5. The parent and the local education agency and their respective representatives shall have an opportunity to confront and question all witnesses at the hearing.
   6. The parent shall have the right to determine whether the child will attend the hearing, if the child is under the age of majority. In certain cases, however, the hearing officers may rule that the child shall be excluded from portions of or from the entirety of the hearing if the welfare of the child would be jeopardized.
   7. The burden of proof as to the adequacy and appropriateness of the proposed evaluation procedures shall be upon the local education agency.
   8. A tape recording or other verbatim record of the hearing shall be made.
   9. Interpretations in the primary language of the home and for the deaf shall be provided during the due process hearing at public expense, when necessary.

D. **Decision of the Hearing Officer.** Within five (5) days after the hearing, the hearing officer shall issue a decision in accordance with the following requirements:
   1. The decision shall be in writing and shall be sent by registered/certified mail to the parent, to the local education agency, and to their respective representatives.
   2. The decision of the hearing officer shall include findings of fact, conclusions, and reasons for these findings and conclusions. The decision shall either approve or disapprove the proposed evaluation or placement.
   3. The decision of the hearing officer shall be based solely on evidence and testimony prsented at the hearing.
   4. A summary of the proceedings at the hearing shall be made available to all parties; it shall include any materials or statements specifically requested by any of the parties.
   5. A copy of the tape recording or other verbatim record of the hearing shall be transcribed and provided, at the expense of the LEA, upon request of the parent or the LEA.
   6. The decision of the hearing officer shall include a statement of the parent's right to an appeal. (see Part V).
   7. The decision of the hearing officer shall be binding to the parent and to the local education agency, its officers, employees and agents - subject only to a review by the SEA when requested by the parent or LEA within ten (10) days following the hearing officer's decision.

   Within five (5) days after a final decision following the due process hearing, the chairperson of the evaluation team shall notify the parent as to the schedule for the evaluation (see Part II, Section B).

IV PROCEDURES FOR "DUE PROCESS" HEARING REQUESTED BY PARENTS

A. The parent has the right to request a due process hearing concerning evaluation, a proposed change in the educational status of the child, proposed placement in a special education program, denial of such placement, or periodic review of the special education program for the child; the parent also has the right to request an alternative evaluation. The procedures prior to the hearing shall be the same as those required when the hearing is requested by the LEA (see Part III, Section B).

B. **Procedures of "Due Process"** Hearing. (see Part III, Section C).

C. **Decision of Hearing Officer.** (see Part III, Section D).

[Additional information regarding procedures prior to, during and after a hearing conducted at the local level is provided in Unit IV of the present publication.]

V. RIGHT TO APPEAL (Administrative Appeal - Impartial Review of the Hearing)

A. Within ten (10) days after a decision by the hearing officer, a request for an impartial review of the

hearing may be initiated by the parent/surrogate or LEA to the SEA, Office of Programs for the Handicapped, State Department of Education (SDE). The SDE shall train three (3) members of the State Advisory Committee for the Handicapped in the procedures for conducting and impartial review. When a request for an impartial review of the hearing is received, one of the three advisory committee members shall be selected to serve as a reviewing official. The reviewing official shall:

1. Examine the entire hearing record.
2. Insure that the procedures at the hearing were consistent with the requirements of due process.
3. Afford the parties an opportunity for oral argument.
4. Make an independent decision on completion of the review.

[*Additional information regarding procedures prior to, during and after the appeal is provided in Unit V.*]

B. The decision of the reviewing official shall be binding to all parties - subject only to judicial appeal.

SUMMARY

The model which has been developed provides a systematic approach in dealing with the complicated legal aspects of "due process". The basic rights guaranteed by "due process" have been identified and summarized as the following:

Rights of the Parent

1. Right to deny permission for evaluation of placement of child in special program.
2. Right to review all school records.
3. Right to request an alternative evaluation.
4. Right to request a hearing.
5. Right to be present at hearing, to request the presence of certain witnesses and to question all witnesses.
6. Right to request re-evaluation subsequent to placement.
7. Right to appeal decision of hearing officer.

APPENDIX A

I. SURROGATE PARENTS

A. **Procedure for Obtaining Surrogate Parents**

1. Any employee of an LEA, SEA, residential school or hospital, any physician, any judicial officer, or any other person whose work involves education or treatment of children, who knows a child needing special education services and knows that the parents or guardians are not known, unavailable, or that the child is a ward of the state, may file a request for assignment of a surrogate. This request shall be made to the LEA.
2. In an effort to determine whether or not the parent or guardian is in fact unknown, unavailable, or the child is a ward of the state, the LEA shall send a notice of the need for a surrogate by registered mail to the adult in charge of the child's place of residence and to the parent or guardian at his last known address. Surrogates shall not be assigned to children who have reached the age of majority.
3. The LEA shall assign surrogate parents only after careful determination has been made and written documentation thereof that the true parent or guardian is unknown, unavailable, or the child is a ward of the state.
4. Once assigned, the surrogate shall represent the child at least through the time of the first periodic review of this educational placement. The child shall have the right to request a change in surrogate at any time he chooses. The LEA shall use the criteria and procedures in determining whether a new surrogate is assigned as was used in assigning the original surrogate.

B. **Recruitment.** The LEA shall recruit persons who can serve as surrogate parents, and maintain a registry of eligible persons, and may compensate or make arrangements for the compensation of such persons when utilized.

C. **Selection.** The LEA shall select a group of people to serve as surrogate parents. Surrogates shall be selected by the district superintendent compatible with criteria stated herein, from a list of persons recommended by the LEA or other appropriate persons. The district superintendent or his designee may select qualified persons from outside the territory of the school district.

D. **Qualifications of Surrogates.** Persons selected as surrogates shall (1) be audlts with no vested interest that would conflict with their primary allegiance to the child they represent, (2) be thoroughly acquainted with the child's educational needs, (3) posses an understanding of the cultural and linguistic background of the children they represent.

APPENDIX B

I. HEARING OFFICER

A. **Recruitment.** The LEA shall recruit persons who can serve as impartial hearing officers and shall maintain a registry of eligible persons to be utilized.

R. **Training.** The SEA is responsible for the training of the hearing officers. This training shall include a knowledge of rules and regulations regarding the education of handicapped children as promulgated by the South Carolina State Board of Education prerequisite to placement of any child in a special program. Also training shall consist of knowledge of due process procedures.

C. **Procedures for Obtaining a Hearing Officer**

1. A request for a hearing officer by either the LEA or parent shall be made in writing and all parties shall be informed.
2. The LEA shall select a hearing officer, subject to approval of both parties within ten (10) days following the receipt of request for same.
3. Compensation to hearing officers, when necessary, shall be the responsibility of the LEA.

D. **Qualifications of a Hearing Officer**

1. Persons selected as hearing officers will have graduated from high school.
2. Will be unbiased toward any party involved in the hearing.
3. Will have no personal interest at stake in the outcome.
4. Shall not be an officer, employee, or agent of the LEA or SEA.

UNIT III

THE HEARING OFFICER:
ROLES/RESPONSIBILITIES

RESPONSIBILITIES OF THE HEARING OFFICER

In preparing yourself to serve as a Hearing Officer it is your responsibility to:

1. Participate in the training sessions provided by the State education Agency.
2. Be familiar with State and Federal Legislation regarding the handicapped, particularly the aspects of law presented on pages 2 through 11 of this manual.
3. Keep up-to-date on litigation pertaining to the handicapped, particularly those cases which originate in the South Carolina courts.
4. Know the procedures for due process adopted by the South Carolina Board of Education (Reference pages 15 through 26 of this manual).
5. Obtain a copy and be familiar with the **Procedures for Survey, Screening, Evaluation, Placement, and Dismissal of Children Into/Out of Programs For The Handicapped.** The document was approved by South Carolina State Board of Education and includes the definitions of handicapping conditions recognized by state law and the criteria for placement/dismissal of handicapped pupils into and out of programs.
6. Have a functional knowledge of the guidelines for "Least Restrictive Alternative", approved by the South Carolina State Board of Education and the program models (ininerant, resource and self-contained) recognized by state law. (Reference Appendix A)
7. Have a functional knowledge of the guidelines for "Non-discriminatory Testing and Evaluation" approved by the South Carolina State Board of Education. (Reference Appendix B)
8. Have a functional knowledge of the guidelines for "Confidentially" approved by the South Carolina State Board of Education. (Reference Appendix C)
9. Have a functional knowledge of the guidelines for "Individualized Education Plans" (IEP's) approved by the South Carolina State Board of Education. (Reference Appendix D)
10. Know the procedures to follow prior to, during and subsequent to a hearing. (Reference Unit IV)
11. Obtain information regarding procedure/forms utilized in the LEA.
12. Obtain information regarding evaluative instruments utilized in the LEA.

GENERAL ROLE OF THE HEARING OFFICER •

A Hearing Officer is:	A Hearing Officer is not:
1. A mediator, an arbiter--	-- A judge
2. A coordinator--responsible for arranging the Hearing and notifying all parties of major activities or events.	--A referral source (for lawyers, expert witnesses, etc.)
3. An information source--responsible for informing all parties of their rights before, during and after the Hearing.	--An enforcer or interpreter of those rights
4. An uninvolved party in no way involved with the child, parent or school previously	--An employee of the school district or previously or currently involved with the program
5. A decision maker--responsible for making reasonable decisions based solely on the evidence and testimony presented during the Hearing.	--A person who seeks information outside the Hearing which might influence his/her decision

• **Impartial Hearing Officer Training Manual** developed by the Ohio Department of Education, Division of Special Education.

6. A protector of confidentiality--responsible for maintaining confidentiality of information prior to, during and after the Hearing

--A person who discusses matter prior to, during or after the Hearing which should properly be discussed during the Hearing

GENERAL INFORMATION FOR THE HEARING OFFICER

1. Who may request a hearing?
   The LEA or parents of pupils who are handicapped or suspected of being handicapped.
2. When may a hearing be requested?
   --When the parent/LEA disagree on a proposed evaluation for a child, i.e., parents refuse permission for evaluation, disagrees with the results of an evaluation or parents wish to have pupil evaluated but LEA does not concur, the parent revokes consent for evaluation, the parent wishes the LEA to pay the expense for an independent evaluation but LEA does not concur.

   --When the parent/LEA disagree on the proposed placement of a pupil, i.e., the parent refuses permission for placement, disagrees with the type of program model, wishes to have the pupil placed but the LEA does not concur, the parent revokes consent for placement, parent wishes child to be placed in a program other than that recommended by the LEA.

   --When the parent/LEA disagree on a proposed change in educational placement, i.e., LEA wishes to make placement less/more restrictive, parent wishes LEA to make placement less/more restrictive.

   --When the parent wishes to challenge information in educational records to insure that is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child.
3. At what age is an individual considered to be of majority age?
   --Eighteen (18) years of age in the state of South Carolina. At the time an individual becomes eighteen (18), the rights of parents **must** be accorded to the individual.
4. What is the cost of a hearing to parents?
   --Hearings are conducted at no cost to parents.
5. Who pays for an independent evaluation?
   --An independent evaluation must be conducted at public expense if the parent disagrees with the evaluation by the LEA, unless the LEA initiates a hearing to show that its evaluation is appropriate and the decision of the hearing officer upholds the LEA. Evaluation must be conducted by persons certificated by the South Carolina Department of Education, employed by another state agency serving the handicapped or hold a certificate from an SEA in another state; the evaluation/placement criteria must be the same as specified in the **Procedures for Survey, Screening, Evaluation, Placement, and Dismissal of Children Into/Out of Program for the Handicapped.**
6. Can a Hearing Officer be held liable for his decision?
   --The Hearing Officer's authority is established by Federal Law. Parents/LEA's have a right to appeal the decision of a Hearing Officer at the local level to the SEA and the right to appeal the decision of the SEA Hearing Officer through the Court of Common Pleas. The possibility of civil action always exists; however, in the event that a civil suit was brought against a Hearing Officer at the local level, the LEA would be responsible for payment of legal fees and financial compensation to parents if such a judgment was made. Similarly, if a civil suit was brought against a Hearing Officer for the SEA, the SEA would be responsible for legal fees or financial compensation to the parent, if such a judgment was made. The relationship of a Hearing Officer to a law suit is analygous to that of a judge.

   --If a parent initiates an appeal of an SEA Hearing Officer through the Court of Common Pleas, it is also possible that a Hearing Officer from the local or state level would be called to testify. In this event the LEA/SEA would be responsible for payment of any expenses incurred by the Hearing Officer in the capacity of a witness during pendancy.
7. Can a Hearing Officer request compensation for his services?
   --Yes. The LEA is responsible for compensating Hearing Officers at the local level when compensation is requested. Hearing Officers for the SEA are members of the State Advisory

Committee For The Handicapped; when persons agree to serve as Hearing Officers for the SEA, they do so on a volunteer basis. The SEA, however, is responsible for clerical assistance, equipment, supplies, etc. required by the SEA Hearing Officer.

8. If Hearing Officers are compensated by the LEA, is their "impartial" status jeoparidized?
   --No. A person who is qualified (Reference Qualifications of Hearing Officers, pages 11 and 12 of this manual) to conduct a hearing is not an employee of the agency because he or she is paid by the agency to serve as a Hearing Officer.

RESPONSIBILITIES OF LEA TO A HEARING OFFICER

1. Assist in locating/providing facilities for hearings.
2. Provide recording equipment, tapes, file folders, a file cabinet, and other necessary equipment/supplies.
3. Provide stenographers and/or other clerical assistance.
4. Provide financial compensation for expenses incurred by Hearing Officers in fulfilling their responsibilities under the law, including travel, lodging, subsistence, etc.

UNIT IV

PROCEDURES PRIOR TO, DURING AND AFTER A HEARING

PROCEDURES PRIOR TO A HEARING

Procedures/Content of Request for a Hearing

The LEA Superintendent or his designee will submit a written request to a Hearing Officer for a hearing or will transmit a written request for a hearing from the parents. In cases where parents are unable to communicate through written correspondence, a person representing the parent, or a member of the LEA staff, as determined by the Superintendent may prepare the request in behalf of the parent.

The Contents of a Request for a Hearing Should Include:

Request for a hearing from either party (LEA/parent)

--the name of the child, the names, addresses and telephone numbers of LEA contact persons/parents/surrogates.
--a statement regarding the nature of the case in question and specific reasons for the request, i.e., parent refuses permission for the evaluation, parent disagrees with placement recommended by LEA, etc.
--specific recommendations for a change in educational placement (when the health and safety of the child, or other persons would be endangered by continuing the present education placement).

Request for hearing from LEA

--a statement regarding the LEA's intentions to engage the services of an interpreter (when parents cannot communicate orally, i.e., parents are deaf, do not understand/speak standard English).
--a statement regarding the LEA's appointment of a surrogate (when parents are unknown, unavailable, or the child is a ward of the state).
--a statement regarding reasons why a child should not be permitted to attend the hearing (when LEA believes it would not be in the best interest of the child).
--a statement that parents have been notified on the same day that a request for a hearing is filed with the Hearing Officer.

Request for a hearing from parents

--a statement requesting an open hearing, (when they so desire).
--a statement that the parents plan for the child to attend the hearing (when they so desire).

Procedures of Hearing Officer After Receiving Request for a Hearing

Upon receipt of a request for a hearing, the Hearing Officer should:

--record the date on which the request for a hearing is received (The Hearing including issuing a decision, must be completed within forty-five (45) days.

--review the request for a hearing to determine whether or not it contains the information previously noted (reference contents of request).

--contact appropriate person to arrange for the use of a facility, tape recorder, and for clerical assistance (unless previously determined that Hearing Officer will make other arrangements).

--NOTIFY the parents orally of the hearing by telephone or home visit. (In cases where a parent does not have access to a telephone, the Hearing Officer may coordinate the home visit through the LEA. LEA personnel may make the home visit to explain the content of the notice). In cases where the date/time/location of the hearing is not reasonably convenient to parents, an acceptable date, time, and location must be determined. (The Hearing Officer should not discuss facts of the pending case with any party).

Through oral notification the Hearing Officer should inform parents of their rights to:

--obtain an independent evaluation of the pupil at public expense (when results of evaluation are in question or parent disagrees with placement).

--to request an open hearing.

--to have the child present during the hearing (The Hearing Officer, however, may determine that it would not be in the best interest of the child).

--to have the child remain in the present educational setting pending the hearing (Hearing Officer, however, may rule that the placement should be altered if the health or safety of the child or other individuals are endangered by continuing present placement).

--to obtain copies of all school records, reports, etc. at a reasonable cost (or at no cost if parents are unable to pay).

These rights are accorded by Law to either party (LEA/Parent)

--to be accompanied and advised by counsel (provide information regarding free/low-cost legal services available in the community and by indivduals with special knowledge or training with respect to the problems of handicapped children).

--to have witnesses at the hearing, present evidence and testimony and to confront and cross-examine witnesses for the opposing party.

--to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) days before the hearing.

--to obtain a written or electronic verbatim record of the hearing upon request.

--to obtain written findings of facts and decisions.

--to appeal the decision of the Hearing Officer within ten (10) days after the hearing to the SEA if parents/LEA disagree with the decision of the Hearing Officer.

Additionaly, through the telephone call/home visit, the Hearing Officer should obtain information from parents such as:

--whether or not the proposed date/location of the hearing is convenient/accessible to parents (this would be an appropriate time to re-schedule/re-locate site of hearing if necessary).

--whether or not the parent wishes the hearing to be closed/open (if not indicated in the request for a hearing).

--whether or not the parent needs transportation to the hearing (to be provided by LEA, if necessary).

NOTIFY all parties (LEA/Parents) of the date, time and location of the hearing through registered/certificated mail (return receipt requested) within five (5) days after receiving a request for a hearing. Written notification should include the following:

--statement of the date, time, and location of the hearing.

--statements regarding the rights of parties (LEA/parents) which are previously outlined under "oral notification".

--a statement regarding the appeal procedures.

PROCEDURES DURING A HEARING

During a hearing, the Hearing Officer should:

--check facility to insure that the physical arrangement of furniture is appropriate and facilities maximum opportunity for communication among persons present.

--check recording devices to insure that they are in working order or insure that a stenographer is present.

Present opening remarks including:

--a statement of the time, date and location of the hearing.

--a statement of the specific parties involved (child's name, parent's name, LEA).

--a statement of the date on which the request for a hearing was filed and the dates and methods of notifying parties regarding the schedule for the hearing.

--a statement that the request for a hearing and notification of the hearing will be entered as part of the official record.

--a statement regarding the nature of the case.

--a request that each person present identify themselves and their relationship to the case in question (i.e., mother, school psychologist, neighbor of parents, etc.).

--a statement of the order in which the parties (LEA/parents) will present evidence and testimony. (The burden of proof is upon the LEA; therefore, it is customary that LEA representatives/witnesses present evidence and testimony followed by evidence and testimony by the parents/witnesses).

--a statement that the parties (LEA/parent) will have an opportunity to confront witnesses representing the opposing party.

--a statement that the Hearing Officer will pose questions to any person attending the hearing as it is deemed necessary.

Example of Opening Remarks:

I am Susan Martin, Hearing Officer for this case. (speaking into tape recorder) This is a due process hearing being held January 25, 1976, at 7:30 p.m. in the conference room of Central High School, Oak Valley School District #1. In these hearing proceedings which were requested by Mr. Charles Thompson, the Superintendent of Oak Valley School District #1, on December 15, 1975 we will hear the case of Johnny Jones, born June 3, 1966. The request for a hearing was filed because the staffing committee of Oak Valley School District #1 recommended that Johnny Jones be placed in a self-contained program for educable mentally handicapped pupils but Mrs. Jones, Johnny's mother, is opposed to this placement and has refused to sign the necessary forms for the placement to take effect. Subsequent to receiving the request for a hearing, I contacted Mrs. Jones by telephone on December 18, 1977 to inform her of the date, and location of the hearing and to advise her of her rights. The date and location was acceptable to Mrs. Jones, and I mailed a certified letter to her and to Mr. Charles Thompson, Superintendent of Oak Valley School District #1 containing information

regarding the date, location of the hearing and a copy of the rights of the parties involved in a due process hearing.

The entire hearing will be taped and a transcript will be made to maintain as part of Jonny's permanent file for five (5) years; however, at the request of the parents all personally identifiable information will be expunged from the record following the termination of educational services to the child. It is necessary that each person present give his name and position with reference to Johnny Jones, so that we may record this information. Let's begin with LEA personnel and their witnesses; then, the parents and their witnesses will have an opportunity to present informtion.

(Hearing Officer passes microphone to parties present:)

Mr. Robert Smith, Coordinator of Special Programs

Ms. Jane Scott, Teacher

Mrs. Jones, Parent

Mrs. Barbara Brown, Neighbor

I think the best way to approach this, from past experience, is to keep this somewhat informal; this is not a court of law. We are here to determine what is best for Johnny. However, we need to proceed in an orderly fashion, so I will ask Mr. Smith to present his information first and then other witnesses for the LEA. Mrs. Jones, you have the right to question these individuals at the conclusion of each presentation. Then, after you and your witnesses have presented your information the LEA may then wish to ask you certain questions. Throughout this hearing I will be posing questions to various person as it becomes necessary.

Evidence and testimony

--advise parties that entire reports will be entered into the record when any portion thereof is introduced as evidence (Number or letter each accordingly, i.e., exhibit #1, #2, or A, B, etc.).

--request that the LEA describe the sequence of events from the time of the initial request for permission to evaluate the pupil up to the time of the request for the hearing.

--request evidence and testimony from each person representing the opinion of the LEA (Refer to each person by name or have them identify themselves each time a statement is made. This will enable the stenographer or person transcribing tape to identify each person with their respective comments).

--to request the parents and their witnesses to provide evidence/testimony. (Prohibit the introduction of new evidence/testimony which was not previously disclosed to the opposing party at least five (5) days prior to the hearing, unless the opposing party is willing to permit its introduction).

--provide opportunities for cross-examination.

--check recording equipment periodically.

PRESENT CLOSING REMARKS

--inform parties that the decision will be made based upon the facts as presented at the hearing.

--advise parties that they may receive a verbatim transcript upon request.

--describe appeal procedures.

--advise parties that the decision will be binding unless an appeal to the SEA is made within ten (10) days after receiving decision.

--advise parents that the decision will be issued within five (5) days after the hearing.

Example of Closing Remarks

Does anyone have any other information to present? (no negative responses). Then, it is my responsibility to make a decision. I want all of you to understand that I have not made a decision at this time regarding Johnny's placement. After I read the reports submitted by the school district and review the transcript of today's proceedings, I will reach a decision. I am charged with an obligation to render a fair and impartial decision, based solely on the facts as presented. I assure you that my decision will reflect what, in my judgment, is best for Johnny as that is the purpose of hearings of this nature.

I will submit a written summary to both the school district and to you, Mrs. Jones. I will also call you to make certain that you understand the reasons for my decision. You will receive my decision within the next five (5) days. The reports and transcript of the hearing will be placed with Johnny's permanent file and will be available to you upon request.

Should either the administration of Oak Valley School District #1 or you, Mrs. Jones, be in opposition to the decision I render, an appeal may be directed to the South Carolina Department of Education, Office of

Programs for the Handicapped within ten (10) days after you receive the notice. If an appeal is not initiated within that ten (10) day period, then my decision will be binding to both parties. Should you choose to appeal this case to the SEA and disagree with the decision of the Hearing Officer at the State level, you may initiate a judicial appeal within ten (10) days; otherwise, the decision of the State Hearing Officer will be binding to all parties.

If there is no further discussion the hearing is adjourned.

PROCEDURES SUBSEQUENT TO A HEARING

--have the hearing record typed in order to retain a written transcript.
--review the transcript with consideration of all evidence which is relevant and material.
--weigh the evidence; the burden of proof is upon the LEA.
--make a decision based on the facts as presented at the hearing.
--NOTIFY the parties in the primary language of the home by registered/certified mail (return receipt requested) of the decision, within five (5) days after hearing. The notice should include:
  --a statement of the nature/purpose of the hearing.
  --a statement of the time, date, location of the hearing.
  --a list of the names of the persons who attended the hearing.
  --a summary of the facts presented at the hearing, including specific points challenged and defended.
  --a statement of the decision.
  --a statement regarding the reasons for the decision.
  --a copy of the transcript if requested by parties involved.
  --a statement that the decision will be binding unless an appeal to the SEA is initiated within ten (10) days following receipt of the decision by the parties involved.
  --a statement describing the appeal procedures.

NOTIFY parents orally of the decision through telephone or home visit within five (5) days.
--document telephone conversation/home visit with date, time, nature of the conversation and names of persons involved in the conversation.
--make a folder to include the transcript, all correspondence received or sent, or any records/reports entered as evidence.

RESPONSIBILITIES IF APPEAL IS INITIATED:

--at the request of parties initiating an appeal, submit copies of all written correspondence, documentation or oral communication, the entire hearing record including all records, reports entered as exhibits on the same day as the party files the appeal.
--attend the review if requested by either party.
--attend the hearing (if the SEA Hearing Officer finds it necessary to conduct a hearing), when requested by either party).

UNIT V

APPEAL PROCEDURES

PROCEDURES/CONTENT OF APPEAL

In cases where the parent/LEA disagrees with the decision of the Hearing Officer at the local level, the case may be appealed to a Hearing Officer at the State level. The appeal should be directed to the Office of Programs for the Handicapped of the South Carolina Department of Education and must be filed within ten (10) days following receipt of the Hearing Officer's decision by the parent/LEA.

The LEA Superintendent (his designee) or parents will submit a written appeal to the SEA. In cases where parents are unable to communicate through written correspondence, a person representing the parent, or a member of the LEA staff, as determined by the Superintendent may prepare the appeal in behalf of the parent.

Within five (5) days after receiving the appeal, the SEA will assign a Hearing Officer who shall have the responsibility of conducting an impartial review of the hearing. When an appeal is initiated, copies of the letter appealing the decision should be mailed to the party representing the opposing view and the Hearing Officer at the local level.

The contents of an appeal should contain:

--a statement that parents/LEA are appealing the decision of the Hearing Officer.

--the name of the child, names, addresses and telephone numbers of LEA contact persons/parents/surrogates/Hearing Officer.

--a statement regarding the nature of the hearing conducted at the local level, i.e., parents refused permission for placement, parents/LEA disagreed with the type of placement, parent challenged specific information contained in the educational records, etc.

--a statement regarding the date on which the hearing was conducted and the decision of the Hearing Officer.

--copies of correspondence between parents/LEA/Hearing Officer, including the initial request for a hearing, the notification from the Hearing Officer, the written decision of the Hearing Officer (if the parents are initiating the appeal, they may request LEA and Hearing Officers to submit this information to the SEA on the same day that the appeal is filed.

--a copy of the entire hearing record including all records, reports, etc. introduced as evidence. (If the party initiating an appeal does not have this information they may request Hearing Officer to submit this information on the same day that the appeal is filed).

PROCEDURES OF SEA HEARING OFFICER AFTER RECEIVING AN APPEAL

--record the date on which the appeal was filed.

--review the appeal to determine whether or not it contains the information previously noted (reference contents of appeal).

--contact appropriate person in the Office of Programs for the Handicapped to arrange for the use of a facility, tape recorder, for clerical assistance, etc.

--schedule date, time and facility, (The review including the decision must be completed within thirty (30) days after receipt of the appeal by the SEA; therefore, it may be prudent to schedule the review within twenty (20) days).

--NOTIFY all parties (LEA/parents/Hearing Officer) through registered/ certified mail (return receipt requested) of the time, date, and location of the review within five (5) days after receiving the appeal. (The date and location should be reasonably convenient to parents). Time extensions for the review may be extended by the Hearing Officer at the request of either party (parent/LEA). Inform parties (parents/LEA) of their rights (reference page 16 of this manual).

--examine the entire hearing record.

--insure that the procedures at the hearing were consistent with the requirements of due process.

PROCEDURES DURING REVIEW

--afford parties an opportunity for oral/written argument or both (at the discretion of the Hearing Officer).

--conduct review consistent with the procedures outlined in "Procedures During a Hearing pages 17, through 19 of this manual.
--advise parties that a written decision will be mailed within five (5) days of the review.
--advise parties of the appeal procedures (civil action) should either party disagree with the decision of the Hearing Officer, and that the appeal must be filed within ten (10) days of the decision, or the decision will be binding to all parties.

PROCEDURES SUBSEQUENT TO A REVIEW

--make an independent decision based on evidence/testimony contained in the hearing record and presented during the review.
The decision may be:
--to uphold the decision of the LEA Hearing Officer.
--to remand to the LEA for a new hearing.
--to conduct a hearing at the SEA level in order to receive additional information.

NOTIFY parties (parents/LEA, Hearing Officer) of the decision by registered/certified mail within five (5) days after the review. The notice should include:

--a statement of the nature and purpose of the review.
--a statement of the time, date, location of the review.
--a list of the names of the persons who attended the review.
--a summary of the facts presented during the review, including specific points challenged and defended.
--a statement of the decision.
--a statements regarding the reasons for the decision.
--a copy of the transcript if requested by parties involved.
--a statement that the decision will be binding unless an appeal (civil action) is initiated within ten (10) days following receipt of the decision by the parties involved.

APPENDIX A

LEAST RESTRICTIVE ALTERNATIVE

Following are the procedures to insure that to the maximum extent appropriate handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature of severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily:

I. A staffing committee (placement committee) will review all pertinent records, results of psychometric testing, behavioral histories, adaptive behavior scales, etc. It will be the function of the staffing committee to recommend, describe or suggest procedures designed to generate written individual plans for all handicapped pupils.

II. Placement procedures for handicapped pupils will proceed only after procurement of parental consent and completion of "Due Process Procedures". Placement shall be considered in light of the least restrictive alternative concept. Should changes in placement be deemed necessary, the procedures for due process will be repeated. The district superintendent, or his designee, will verify appropriate placement by his signature.

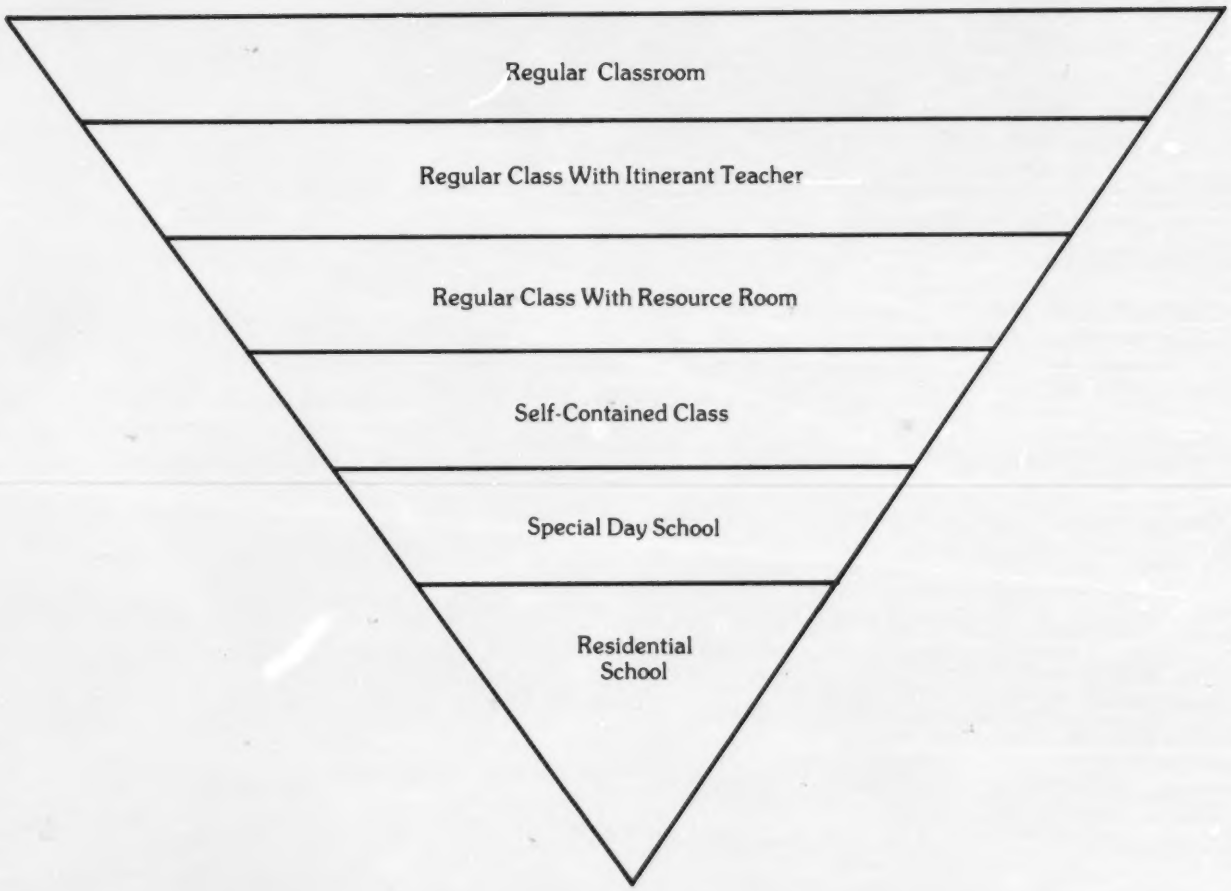
III. A process and procedure has been defined to provide for periodic reassessment (reference "Due Process Procedures"). Periodic reassessment is defined as re-evaluation of each pupil at least every two years. Individual case reviews will be conducted on an annual basis and determined by educational needs.

IV. Procedures have been established which shall initiate a formal appeal process for both parents and students (reference "Due Process Procedures"). The appeal process shall be clearly written and accessible to parents.

V. The State Department of Education shall have the responsibility for:

   A. Program review and specification of deficiencies for LEA's to insure a continuum of services for handicapped school children. "Continuum of Services" shall mean from least restrictive to most restrictive educational setting. The greatest number of handicapped pupils will receive appropriate services while placed in a regular classroom through an itinerant or resource room program. In an itinerant program the specialist will provide continual ongoing services to handicapped pupils and teachers taught in regular classroom settings. A resource room program shall involve pupils who will remain in regular classrooms for the major part of the day and will be scheduled into the resource room for one or more periods of individualized instruction contingent on pupil's needs. The option of self-contained classes shall be considered when the diagnostic assessment indicates that the pupil's needs cannot be met by placement in the general education program. Self-contained programs are for those students who demonstrate severe handicapping conditions as evidenced by diagnostic procedures and subsequent educational plan. More profoundly handicapped individuals shall be referred to special day schools and residential facilities.

   B. This Continuum of Services model calls for the implementation of various alternatives to special classes and separate schools. It is important to note that the model is a continuous series of more restrictive alternatives.


Regular Classroom
Regular Class With Itinerant Teacher
Regular Class With Resource Room
Self-Contained Class
Special Day School
Residential School

APPENDIX B

NON-DISCRIMINATORY TESTING AND PLACEMENT

Following are the procedures that have been adopted by this SEA to insure that testing and evaluation materials and procedures utilized for purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory:

I. DEFINITIONS

A. **Classification.** This term means providing a description of the types of educational services and programs appropriate to the individual needs of a child, which will enable the child to attain optimum proficiency. For educational purposes, this term does **not** mean the categorizing of a child by a diagnostic label, unrelated to educational programming.

B. **Placement.** This term shall mean the provision of an appropriate learning environment for handicapped children through a continuum of special services established in the public school setting. Placement shall include, but not be limited to, remedial services provided by various specialists, resource rooms, self-contained classes, itinerant programs, and educational adjustments in regular classes.

II. PROCEDURES FOR NON-BIASED AND NON-DISCRIMINATORY EVALUATION AND PLACEMENT OF HANDICAPPED PUPILS IN LEA'S

A. **Evaluation Procedures.** Each handicapped child or child suspected of being handicapped shall be evaluated prior to placement. Specific evaluation procedures for each area of handicapped condition have been developed and approved by the State Board of Education (SBE) through the **Procedures for Survey, Screening, Evaluation, Placement, and Dismissal of Children Into/Out of Programs for the Handicapped.** Evaluations shall be conducted by persons duly credentialed by the State Department of Education.

1. **Instrumentation and areas to be assessed**
   The evaluation instruments and areas to be assessed shall include, but not be limited to, the following:
   a. Assessment of the child's level(s) of educational functioning by means of standard achievement tests or criterion-referenced materials.
   b. Assessment of the child's intellectual functioning by means of standard intelligence tests which measure verbal and performance skills.
   c. Assessment of the adequacy of vision, speech and hearing for educational purposes.
   d. Assessment of the child's behavior by means of adaptive behavior scales and teacher inventories.
2. Interpretation of test results shall include, but not be limited to, the following considerations:
   a. The evaluation instruments shall be culture-specific in content and standardization when these instruments are available.
   b. The evaluation instruments utilized that are not culture-specific shall be interpreted in that context.
   c. The test instructions shall be interpreted for the child in the primary language of the child
   d. The evaluation instruments shall be appropriate to the age and type of handicapping condition suspected.
   e. The test results shall be stated in specific behavioral terms with educational implications.
   f. The interpretation of the results shall reflect inter/intra test analysis for educational implications.
   g. The interpretation of the results shall be culturespecific for each child.

B. **Placement Procedures.** The LEA shall establish a placement committee which shall consist of at least three members representing psychoeducational, behavioral/environmental/health histories, and educational components. Parents/surrogates are encouraged to participate.
The responsibilities of the placement committee shall include, but not be limited to, the following:

1. To review all procedures, instruments and observations utilized in the evaluation.
2. To determine the fairness of these procedures, instruments, and observations relative to the child's racial, ethnic and socioeconomic background.
3. To obtain a case profile from the parents relative to the health history, developmental history, adaptive behavior and sociocultural background.
4. To develop a preliminary individualized program for each handicapped pupil.
5. To obtain information from school personnel, parents and community related personnel relative to appropriate placement of the child.
6. To determine the classification and appropriate placement of handicapped pupils, based on the IEP.
7. To maintain written documentation of all proceedings of the placement committee.
8. To recommend placement of the child within ten days after the staffing is completed.
9. To conduct a periodic review of the child's progress, relative to the stated goals and objectives of the IEP, within eight months subsequent to placement, and annually thereafter, or to conduct a periodic review at the request of the parents any time after the first three months of placement.

C. **Reevaluation Procedures.** Each handicapped child placed in a program for the handicapped shall be reevaluated within the established time frames utilizing the procedures approved by the SBE in the **Procedures for Survey, Screening, Evaluation, Placement, and Dismissal of Chilren Into/Out of Programs for the Handicapped.** Additionally, pupils shall receive a reevaluation in accordance with SBE regulations prior to any change in educational placement.

D. **In-Service Training.** The LEA shall provide opportunities for in-service training for school personnel who are responsible for the evaluation and placement of handicapped children or children suspected of being handicapped. The in-service training shall include, but not be limited to, the following components:
1. The development of competencies in the selection of test materials and the interpretation of test results appropriate for children of various racial, ethnic and socioeconomic backgrounds.
2. The development of competencies in the interpretation of test results based upon the child's specific behaviors as well as upon normative data.
3. The development of competencies in making judgments of adaptive behavior as well as in the interpretation of adaptive behavior scales.

E. **Comprehensive Recording System.** The LEA shall establish and maintain a comprehensive system of record keeping to insure that current and complete records are available for each child receiving diagnostic, instructional and habilitative services. The case records shall include the following information:
1. Copies of medical, educational, developmental, and familial history, and the results of assessment and diagnostic procedures.
2. The names of the placement committee members responsible for classification and placement of the child.
3. A chronology of all services rendered, signatures of the appropriate persons and the dates.
4. Progress reports to be prepared at regular intervals.
5. A final summary report when services are terminated.
6. A statement signed by the parents to permit the evaluation and placement of the child.
7. A release signed by the parent to authorize the forwarding of case information, when requested, to physicians and other agencies.

III. SEA RESPONSIBILITIES

A. **Program Audit.** South Carolina Department of Education shall provide periodic program audits of LEA's to insure compliance with procedures specified above.

APPENDIX C

CONFIDENTIALITY

In accordance with detailed criteria prescribed by the Commissioner, the following policies and procedures have been established by the State of South Carolina to protect the confidentiality of the child identification data and information required under Section 613 (b) (1) (A) of the Act:

I. **Notice: Method and Content**

A. **Newspaper Announcements.** The South Carolina State Department of Education will place announcements in all major newspaper having statewide coverage, upon the United States Office of Education's approval of the FY '76 Program Plan, including **The State, The News and Courier,** and **The Greenville News.** All public announcements will be presented in English, as the population of the state is relatively homogenous with regard to native language unless it is clearly not feasible to do so. Announcements containing information similar to the following will appear in the above mentioned papers:

The South Carolina Department of Education is coordinating the collection of selected information on mentally handicapped, emotionally handicapped, learning disabled, hearing handicapped, speech handicapped, visually handicapped, orthopedically handicapped and deaf-blind children, birth through twenty-one years of age for the purposes of identifying all handicapped children who are not presently receiving educational services by any agency, identifying preschool handicapped children, determining present and future program and placement needs and for statistical reporting. Information will be sought from the local educational agencies, Department of Mental Health, Department of Mental Retardation, Department of Health and Environmental Control, Department of Vocational Rehabilitation, Commission for the Blind, United Cerebral Palsy, Head Start, Urban League, South Carolina School for the Deaf and Blind, Charles Lea Center, Youth Services, Babcock Center, Department of Corrections and the South Carolina Opportunity School.

Information which could identify an individual child will be maintained only by designated individuals in the SEA, LEA and other participating local and state agencies/organizations. Data items to be collected include professional diagnostic information, services needed and provided, and the state and local cost for selected programs.

Parents and guardians shall have the rights to inspect any and all data which is subject to collection and to appeal the accuracy of any such information. The access of unauthorized persons to personally identifiable data without parental consent is forbidden. Interested parties may contact the appropriate agency/organization to ascertain the location of personally identifiable data.

One person in each SEA, LEA and participating agency/organization has responsibility for having access to the data. It is required that all data be destroyed within five years following the completion of special services to the child. Parents will be notified prior to the collection and destruction of personally identifiable data. For further information regarding the survey or regarding the person to contact for information, you may contact:

Mrs. Lee Parrish, Program Information Coordinator
Office of Programs for the Handicapped
State Department of Education
311 Rutledge Building
1429 Senate Street
Columbia, South Carolina 29201

LEA's will have the responsibility for submitting a similar notice to all local newspapers during the month of March, 1976.

B. **Agency/Organization Meetings.**

A series of meetings will be held with the participating agencies/organizations for the pupose of of delineating the guidelines required for confidentiality. Copies of the following notice will be provided to each participating agency and to LEA's. (These notices will be of sufficient quantity to assure that they may be seen and/or otherwise made public to the parents of children upon whom information may be collected).

A NOTICE TO PARENTS

The (agency/organization name entered) is conjointly engaged in collecting selected information on mentally handicapped, emotionally handicapped, learning disabled, hearing handicapped, speech handicapped, visually handicapped, orthopedically handicapped, deaf-blind, and developmentally disabled children birth through twenty-one years of age, for the purposes of determining present and future program needs and for statistical reporting. Participating agencies/organizations include the South Carolina Department of Education, local educational agencies, South Carolina Department of Mental Health, South Carolina Department of Mental Retardation, South Carolina Department of Health and Environmental Control, Vocational Rehabilitation, South Carolina Commission for the Blind, United Cerebral Palsy, Head Start, Urban League, South Carolina School for the Deaf and Blind, Charles Lea Center, Youth Services, Babcock Center, Department of Corrections and the South Carolina Opportunity School.

Information which could identify an individual child will not be released to unauthorized persons. As a parent, you are guaranteed the right to inspect any such information which is subject to collection and to challenge the accuracy of the information. Access by any unauthorized person to information which would identify an individual child, without informed consent of the parent, is expressly forbidden.

This agency/organization maintains the responsibility for the confidential maintenance and storage of this information and for the destruction of this information following the termination of services for that child. Parents will be notified prior to the destruction of the data.

II. **Access Rights**

Parents are guaranteed full and free access to information which is collected and maintained regarding their children by the SEA, LEA's and other participating agencies/organizations.

A. Parents shall have the right to:
   1. Inspect, review and procure copies of any and all data pertaining to their children at a reasonable cost (or at no cost if parents are unable to pay).
   2. Have records available to them within forty-five (45) days subsequent to specific request.
   3. Receive, upon specific request, an explanation or interpretation of data pertaining to their children.
   4. Challenge the accuracy or appropriateness of data pertaining to their chidlren.
   5. Authorize or deny, by virtue of informed consent, requests for release, transfer or usage of data for purposes or to individuals other than those designated (Reference II, B).
   6. Receive, upon specific request, a list of names of persons to whom personally identifiable data has been released, an explanation of the specific type of data released, and the purpose for which it was released.
   7. Receive, upon specific request, the name of the designated person in the SEA, LEA, and other participating agencies/organizations who is responsible for the collection and maintenance of personally identifiable data.
   8. Receive, upon specific request, a list of the types of data collected and the specific location thereof.
   9. Receive, upon specific request, copies of printed policies and procedures developed to insure the confidentiality of personally identifiable data from the SEA, LEA's and other participating agencies/organizations.

B. Access to Data at State and Local Level
   1. The SEA, LEA's and participating agencies/organizations are authorized to collect personally identifiable data. Participating agencies/organizations currently include:
      a. Department of Mental Retardation
      b. Department of Mental Health
      c. Department of Health and Environmental Control
      d. Department of Vocational Rehabilitation
      e. South Carolina Commission for the Blind
      f. United Cerebral Palsy
      g. Head Start
      h. Urban League

i. South Carolina School for the Deaf and Blind
j. Charles Lea Center
k. Youth Services
l. Babcock Center
m. Department of Corrections

2. One person shall be designated to be responsible for the collection and maintenance of personally identifiable data in the SEA, LEA's and participating agencies/organizations.
3. The SEA, LEA's and participating agencies/organizations shall maintain records of parties obtaining access to personally identifiable data. The records shall include:
   a. the name of the party to whom personally identifiable data is disclosed
   b. the specific data disclosed
   c. the purpose for which data was disclosed
4. LEA's are authorized to collect and maintain personally identifiable data for the following purposes:
   a. program planning, budgeting and evaluation
   b. placement/services for children
   c. employment training and placement of children
   d. establishing a basis for referral
   e. establishing a basis for evaluation.
5. The SEA is authorized to collect and maintain personally identifiable data for the following purposes:
   a. program planning, budgeting and evaluation
   b. provision of services to handicapped children
   c. monitoring programs for handicapped children
   d. enforcing state and federal requirements.
6. Participating agencies/organizations are authorized to collect and maintain personally identifiable data for the following purposes:
   a. program planning, budgeting and evaluation
   b. placement/services for children
   c. employment training and placement of children
   d. establishing a basis for referral
   e. establishing a basis for evaluation.

III. **Hearing Rights**

Parents have the right to request appropriate amendments to data which they believe is inaccurate, misleading, or violates the privacy of other rights.

A. Procedures established in LEA's to insure parents' rights to challenge the accuracy of data (in accordance with procedural "due process" as outlined in the FY '76 amendments to P.L. 93-380).
   1. Parents shall submit a written or otherwise formal request for appropriate amendments to data to the district superintendent or his designee.
   2. The LEA shall notify the parents within 15 working days of the disposition of the request.
      a. When the parents' request is accepted, the appropriate amendments shall be made.
      b. When the request is denied, parents shall be informed of their right to request a hearing.
   3. Parents shall submit a written or otherwise formal request for a hearing to the district superintendent or his designee.
   4. The LEA shall submit the parents' request and all previous correspondence to an impartial hearing officer.
   5. Within five days after receipt of a request for a hearing, the hearing officer shall notify all parties of the date, time and location of the hearing.
      a. Parents have the right during the hearing to present witnesses and relevant issues and at the expense of the parents, be represented by legal counsel.
      b. Within five days subsequent to the hearing, the hearing officer shall notify all parties of the decision based on the evidence and testimony presented.
      c. The notification by the hearing officer shall include a summary of the proceedings of the hearing, justification for the decision and the parents' right to a judicial appeal should they oppose his decision.
   6. When the decision of the hearing officer is that the data is inaccurate, the appropriate

amendments shall be made by the LEA.

7. When the decision of the hearing officer is that the data is inaccurate, the appropriate amendments shall be made by the LEA.
8. Disclosure of the contested portion of the data to authorized persons, subsequently, shall include a copy of the parents' statement.

Disclosure of the contested portion of the data to authorized persons, subsequently, shall include a copy of the parents' statement.

B. Hearing procedures for participating agencies/organizations other than the SEA, LEA's:
Currently the South Carolina Department of Education does not possess the authority to prescribe specific procedures to conduct hearings to challenge the accuracy of confidential data that may be maintained on the clientele of participating agencies/organizations. In consequence thereof, the South Carolina Department of Edcuation solicits the cooperation of participating agencies/organizations in developing hearing procedures compatible with those described herein, for LEA's (Reference III, A).
Specific hearing procedures for this purpose will be approved by the State Department of Education for those participating agencies/organizations with whom the Department of Education maintains contractual relationships and/or possesses the authority to approve the educational programs. Such approvals or "consent agreements" shall be applicable to the participating agency/organization at the state level and all local subdivisions under the jurisdiction or control of parent agency.

IV. **Consent**

A. Parental consent must be obtained prior to:
1. The disclosure of data to anyone other than individuals designated (Reference II, B).
2. The utilization of data for purposes other than those designated (Reference II, B).
3. The conducting of formal evaluations, interviews or testing accomplished for the purpose of placing pupils in appropriate programs for the handicapped.
   a. In the event that parental permission cannot be obtained prior to formal evaluations, LEA's may invoke hearing procedures as specified (Reference III, A).
   b. In the event parental permission cannot be obtained prior to formal evaluations in other in other participating agencies/organizations, hearing procedures may be invoked by the participating agencies/organizations. Approval of these procedures shall be in concert with the constraints set forth (Reference III, B).

V. **Safeguards**

A. The SEA, LEA's and other participating agencies/organizations shall protect the confidentiality of personally identifiable data at collection, storage, disclosure and destruction stages.
B. Training or instruction regarding state policies and procedures shall be provided to persons collecting or using personally identifiable data.
C. One official at the SEA, LEA's and participating agencies/orgnaizations shall be designated as the responsible person for insuring the confidentiality of personally identifiable data.
D. The SEA, LEA's and participating agencies/organizations shall maintain for public inspection, a list of the names of those employees having access to personally identifiable data (Reference II, B).

VI. **Destruction of Data**

A. All personally identifiable data collected for purposes set forth herein (Reference II, C) shall be destroyed within five (5) years after data is no longer needed to provide educational services to the child except that a personal record consisting of pupil's name, address, telephone number, his/her grades, attendance record, classes attended, grade level completed, and the year completed may be maintained without time limitation.
B. Forty-five (45) days prior to destruction of data, the parents shall be notified that they have the right to request and be provided, at a reasonable cost, a copy of any data which has been obtained or used for the purposes set forth herein (Reference II, C).

VII. **Children's Rights**

Pupils, upon reaching age of majority, shall have the same rights as the rights of parents as stated herein (Reference II, B), except in the case of a severely or profoundly handicapped child who is legally determined to be incompetent to make such decisions for himself, and for whom legal guardianship is required beyond age of majority. In those instances, the legal guardian shall maintain the rights to privacy as outlined.

VIII. **Enforcement**

Owing to the diversity of authority, program organization and delivery of services, varying procedures for enforcement of the policies stated herein for the protection of personally identifiable data shall be utilized.

A. **Enforcement of confidentiality policies with respect to LEA's and those agencies for whom the State Department of Education has accreditation authority:**

1. LEA's and agencies for which the SEA has accreditation authority certify that the SEA's policies for the protection of personally identifiable data are maintained. Assurances are certified through such mechanisms as **Annual District Plan for Programs for Handicapped Children** and **Defined Minimum Program.**
2. Should these assurances not be provided, the Office of Programs for the Handicapped shall transmit this information to the Accreditation Section of the Office of General Education of the South Carolina Department of Education. The Office of General Education shall initiate established procedures to assign accreditation deficiencies which, if not corrected, could culminate in the loss of accreditation of the LEA or agency by the South Carolina Board of Education's established procedures for redress of grievances.
   In the event "just cause" can be demonstrated that violations are occurring, the State Department of Education shall advise the plaintiff of legal alternatives.
3. If evidence suggests that LEA's or agencies for which the State Department of Education has accreditation authority are in violation of the policies set forth subsequent to providing assurances for the protection of personally identifiable data, this evidence will be provided to the Accreditation Section of the Office of General Education who shall invoke the procedures above.

B. **Enforcement of confidentiality policies with respect to participating agencies/organizations other than LEA's and those agencies over which the State Department of Education has accreditation authority:**

1. The South Carolina Department of Education does not currently possess authority to enforce the policies for protection of personally identifiable data as set forth herein with respect to all agencies/organizations providing educational programs and/or related services for handicapped children. Enforcement in those few agencies with whom the State Department of Education has no contractual relationship nor accreditation authority shall be encouraged to voluntarily subscribe to the policies set forth by the various agencies with whom allied. In the event "just cause" can be demonstrated that violations are occurring, the State Department of Education shall advise the plaintiff of legal alternatives.

C. **Those agencies maintaining contractual relationships and/or program approval by the South Carolina Department of Education shall be accorded the following procedures when "just cause" of suspected violations are demonstrated:**

1. Notification shall be transmitted to the Chief Executive Officer, along with supporting information with respect to the alleged violation(s).
2. The Chief Executive Officer (or his designee) of the agency concerned shall respond to the notice within 30 working days subsequent to mailing of the notification. If no response is received within 30 days, the notification procedure shall be replicated. If no response is received within 15 working days subsequent to the second notification, then the State Superintendent of Education may authorize that no further payment be made under the obligation of any financial contracts until the matter is resolved.
3. Should the response, in the judgment of the State Superintendent of Education, demonstrate an appropriate resolution of the alleged complaint, the matter will be deemed concluded.
4. In instances where payment under financial contracts has been suspended by the State Superintendent of Education, the agency/organization shall have the right to a hearing.

Procedures for the Hearing

a. Upon notification by he State Superintendent of Education that further payments have been deferred under any contractual relationships between the department and the participating agency/organization (or subdivisions thereof), the agency/organization may request a hearing within 30 working days from the date of receipt of the notification of suspended payments.

b. The hearing shall be conducted by three (3) members of the South Carolina Department of Education State Advisory Committee on Programs for the Handicapped. The

Department of Education and the agency/organization concerned shall have the right to present witnesses and testimony thereof. Upon conclusion of the hearing, recommendations of the chairperson of the sub-committee shall be presented in writing within ten working days of adjournment of the hearing. The State Superintendent of Education shall then present the recommendations of the chairperson of the hearing to the State Board of Education at its next scheduled meeting. The Board shall render a decision binding on all parties.

D. Ongoing enforcement activities shall consist of **Annual District Plan for Programs for Handicapped Children** approval and **Defined Minimum Program** approval (including assurances), program audits by professional staff members of the South Carolina Department of Education, and an investigation of alleged violations directed to the South Carolina Department of Education by other means.

A statement of compliance with the policies of the State Department of Education, approved by the State Department of Education, shall become a condition of future contractual relationships between the Department of Education and the participating agencies. Such policies shall pertain to vendored services/programs sub-contracted by participating agencies/organizations.

VI INDIVIDUALIZED EDUCATION PROGRAM (612 (4))

Section 612 (4) of the Act states that in order to qualify for assistance under Part B, the State must demonstrate that "each local education agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in Section 614 (a) (5)."

Section 614 (a) (5) states that a local education agency or an intermediate education unit must submit an application for funds to the State education agency. The application shall "provide assurances that the local education agency or intermediate education unit will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate, revise its provisions periodically but not less than annually."

A. Present a copy or draft of the policies your State will utilize to implement the requirement that local education agencies will maintain individualized education programs and establish, review, and revise individualized education programs.

The following plan has been developed by the South Carolina Department of Education for approval by the State Board of Education (SBE) to insure that the LEA's/IEU's, participating agencies, and private schools serving handicapped pupils, when placed by the LEA or SEA, comply with the requirements of the law pertaining to the development and review of the Indvidualized Education Plans (IEP's) for handicapped children.

1. **Definition of IEP.**
"The term 'individualized education program' means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children..." §602 (19)

2. **Time Requirements for the Development of the IEP.**
For pupils currently receiving special education/related services the IEP must be completed by the beginning of the next school year. For pupils initially entering programs of special education/related services, the IEP planning conference must be conducted within thirty (30) days of the formal evaluation and subsequent determination of pupil's eligibility for special education/related services. The IEP must be completed within thirty (30) days after program entry. Rationale: It is expected that the nucleus of an IEP will be developed **prior** to program entry. Additional specificity (Item 4-c, Short-term instructional objectives for each pupil) will be added to culminate in a completed IEP within thirty (30) days after program entry or in the beginning of the school year for former participants.

3. **Persons Responsible for Developing the IEP.**
   a. Representative of the LEA/IEU or private school.
   The representative must be a person who meets State certification requirements or or other State-Adopted criteria for school administrators, supervisors or special education instructional personnel.
   b. Pupil's Classroom Teacher.
   This may include the pupil's regular teacher and/or the special education teacher, if pupil is receiving special education and/or related services prior to the IEP planning conference.
   c. Parent/Surrogate.
   If parent/surrogate has a communication barrier, the LEA/IEU must provide an interpreter. If parent/surrogate cannot attend, the LEA/IEU must use other methods, i.e. social worker, visits, telephone conference, teacher home visits, to insure parental participation. Parent/surrogate may waive the right of attendance by submitting such a request in writing to the LEA/IEU. If parent/surrogate refuses or waives the right to attend, the LEA/IEU must substantially document the attempt made to insure parental participation.

d. Pupil

The pupil concerned should be involved in developing the IEP unless it is clearly not feasible for his/her participation.

e. Other

Included, also, may be the psychologist, guidance counselor, and/or any other provider of related services and/or health services who may contribute meaningful information in the development of the IEP.

4. **Components of IEP.**

The IEP shall be developed consistent with § 602 (19) and shall include a written statement of:

a. The present levels of educational performance of each pupil. This refers to a description of the pupil's level of performance as appropriate to the area of handicapping condition, i.e. reading, math, speech/language development, visual/auditory deficits etc. and a description of the child's learning styles, strengths, and weaknesses.

b. Annual goals for each pupil. These refer to terminal behaviors/performances stated in measurable terms as determined from the results of assessment procedures.

c. Short-term instructional objectives for each pupil. These refer to a series of sequential and measurable intermediate steps which must be accomplished toward meeting the stated annual goals.

d. The specific educational services to be provided to each pupil and the extent to which each pupil will be able to participate in regualr educational programs.

This refers to a description of (1) all educational services required to meet the unique needs of the pupil as reflected in the IEP including those related services as defined in S **§602 (17), (2)** instructional strategies and/or techniques, (3) any special instructional media and materials to be provided and (4) the type of physical education program in which the pupil will participate. The plan, additionally, should state the type of handicapping condition and the specific model recommended with reference to least restrictive environment as required in Public Law 93-380.

e. The projected date for initiation and anticipated duration of such services.

This refers to the projected starting and ending date of educational programs/related services to be provided for each pupil.

f. Appropriate objective criteria and evaluation procedures and schedules to determine, at least on an annual basis, if instructional objectives are being achieved.

The evaluation of the IEP shall be in consonance with the stated objectives and must reflect the degree to which these objectives have been attained. The IEP will be reviewed as warranted by the pupil's progress in meeting the stated goals and objectives; however, the plans for each pupil must be reviewed and updated, at least annually. A projected date, by month and year, of the annual review shall be included. For pupils receiving initial special education/related services, the annual review must be completed during the first and current year of special education enrollment. With the exception of the parent/surrogate or guardian, the evaluation of the stated objectives shall be performed/developed by persons duly credentialed. The objectives developed and results obtained as a product of evaluation shall be expunged within time frames established by the confidentiality guidelines as regulated by the State Board of Education and approved by the Bureau of Education for the Handicapped, United States Office of Education. (reference **Confidentially,** Attachment #1) The results of the evaluation shall be in written form and readily accessible to parents and State Education Agency (SEA) personnel.

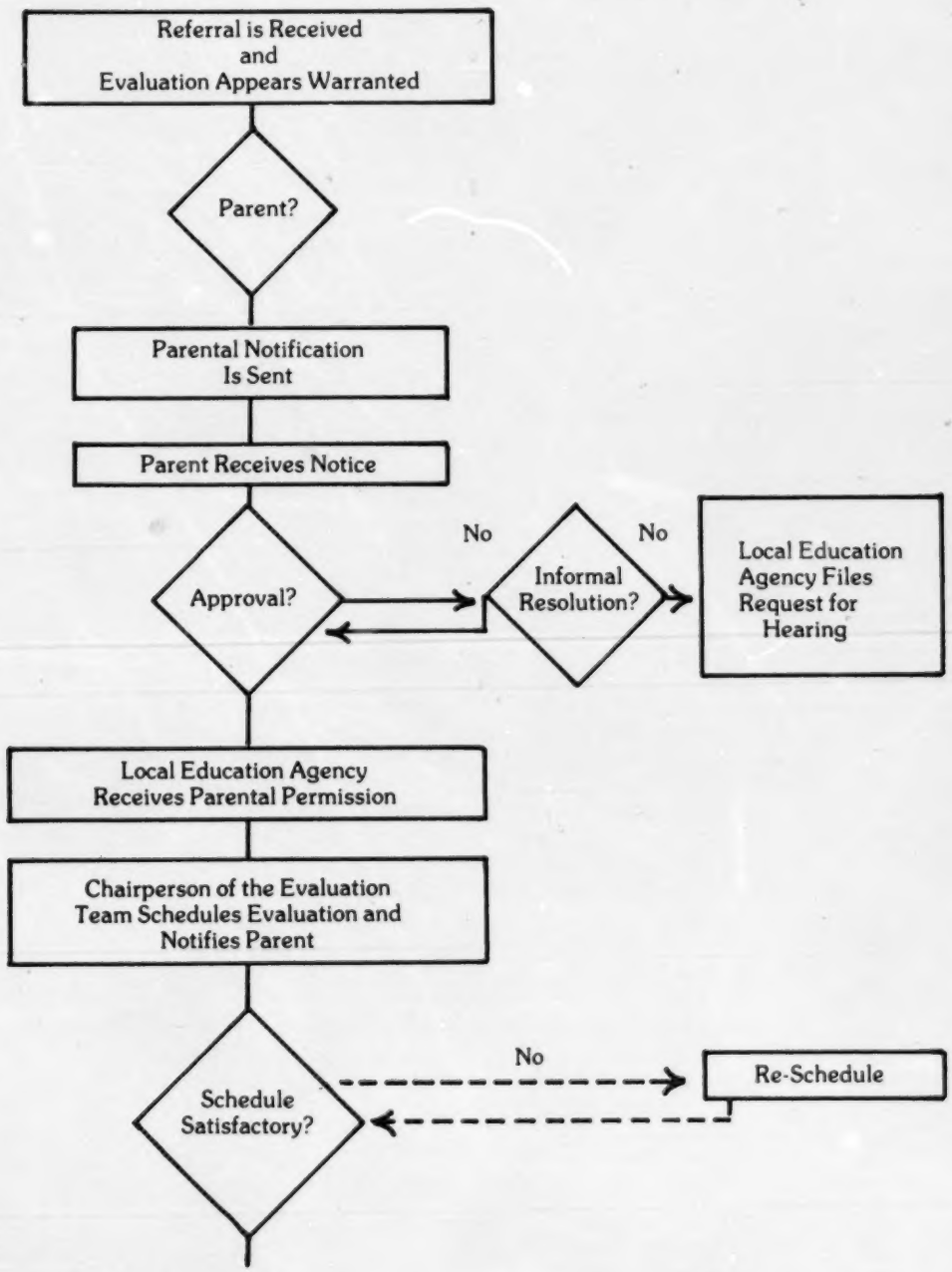
g. A list of the individuals responsible for developing the IEP must be maintained by the LEA/IEU. LEA personnel shall have final responsibility for the development of the individual education plan with the option to delegate the development of the IEP to the private school or participating agencies/organizations.

Excerpt from Approved State Plan FY'78, South Carolina Department of Education, Office of Programs for the Handicapped, August, 1977.

APPENDIX E
Chart 1
EVALUATION AND PLACEMENT

The following schematic represents the sequence of events in the evaluation and placement of pupils and includes the time frames consistent with the requirements of procedural due process.

Maximum Time for Each Step



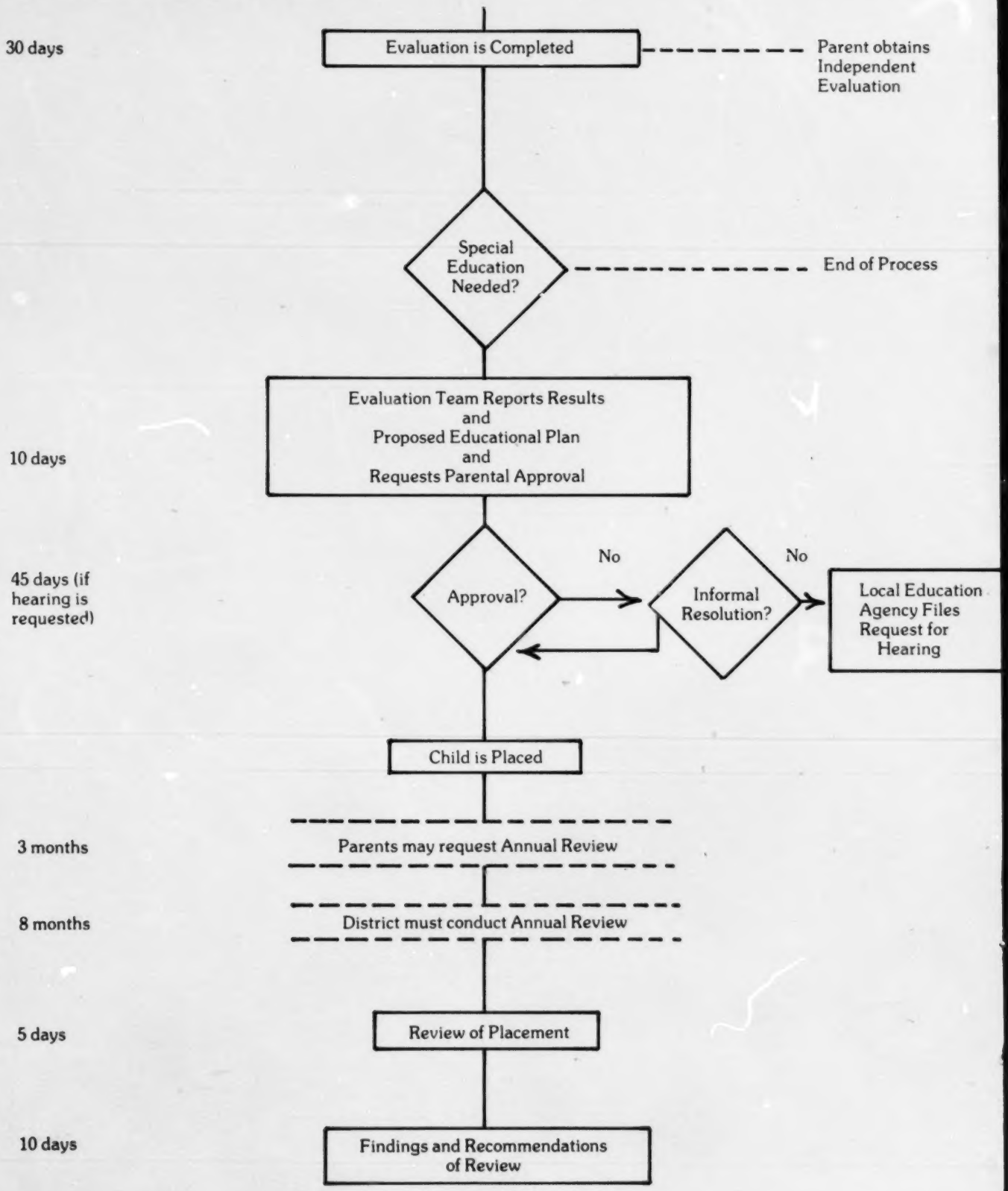
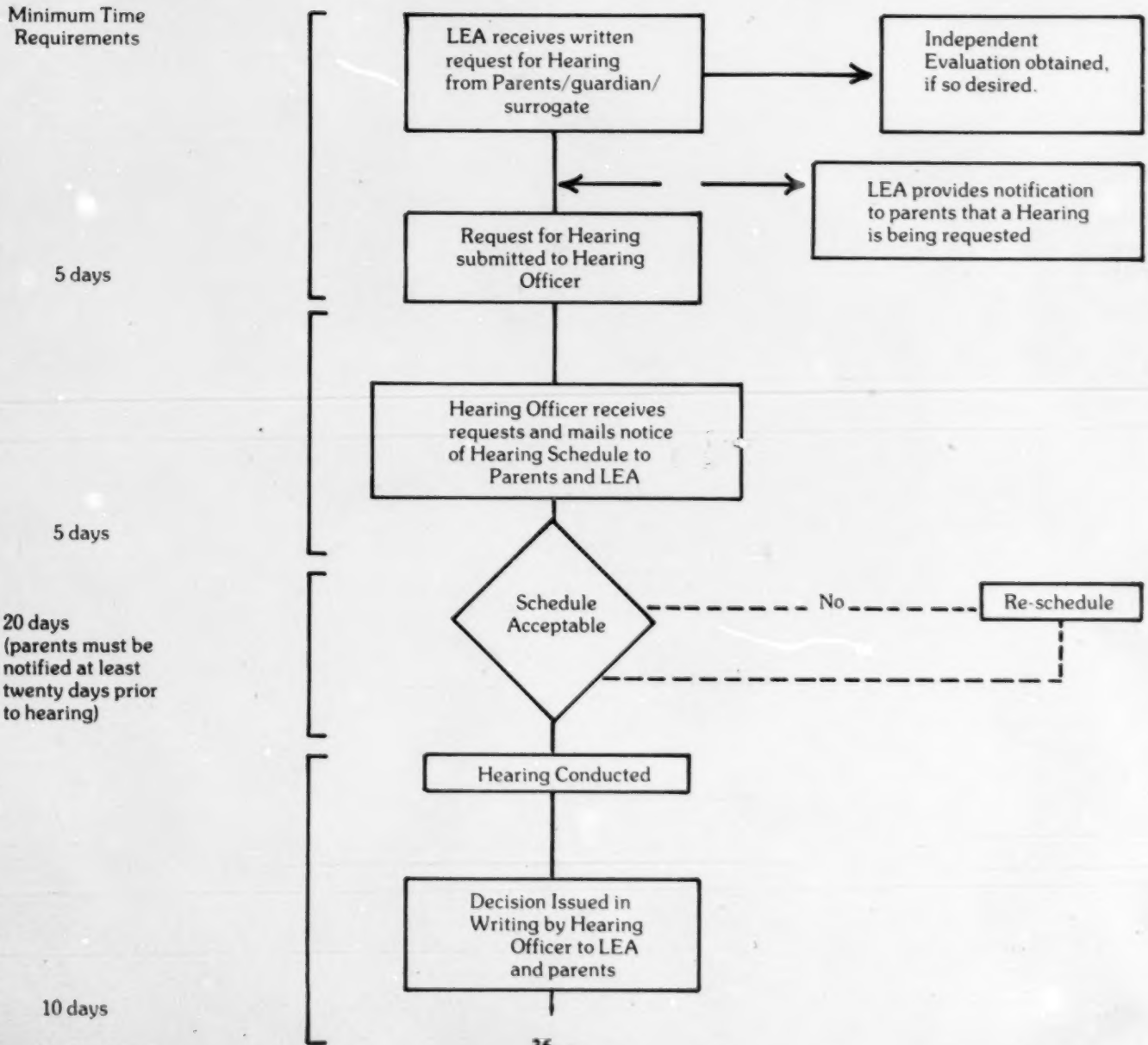
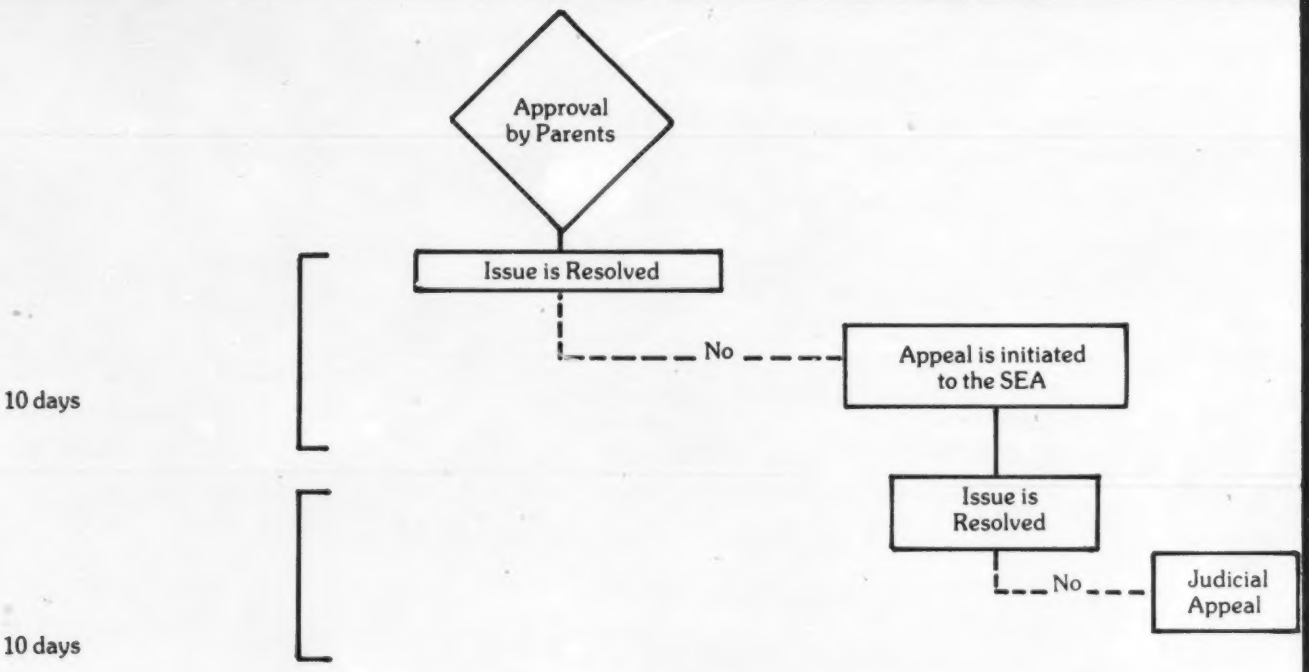

30 days
Evaluation is Completed
Parent obtains Independent Evaluation
Special Education Needed?
End of Process
Evaluation Team Reports Results and Proposed Educational Plan and Requests Parental Approval
10 days
45 days (if hearing is requested)
Approval?
No
Informal Resolution?
No
Local Education Agency Files Request for Hearing
Child is Placed
3 months
Parents may request Annual Review
8 months
District must conduct Annual Review
5 days
Review of Placement
10 days
Findings and Recommendations of Review

CHART 2
HEARING PROCEDURES

The following schematic represents the sequence of events from the time a hearing is initiated up to the time appeal procedures are invoked. The indicated time lines are consistent with the requirements of procedural due process.

HEARING PROCESS
(Initiated by Parents/Legal Guardians/Surrogates)


Minimum Time Requirements
LEA receives written request for Hearing from Parents/guardian/ surrogate
Independent Evaluation obtained, if so desired.
LEA provides notification to parents that a Hearing is being requested
Request for Hearing submitted to Hearing Officer
5 days
Hearing Officer receives requests and mails notice of Hearing Schedule to Parents and LEA
5 days
Schedule Acceptable
No
Re-schedule
20 days (parents must be notified at least twenty days prior to hearing)
Hearing Conducted
Decision Issued in Writing by Hearing Officer to LEA and parents
10 days


Approval by Parents
Issue is Resolved
No
Appeal is initiated to the SEA
10 days
Issue is Resolved
No
Judicial Appeal
10 days